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Attorneys for Plaintiff  
PAUL WOZNIAK

**FILED**

**MAR 23 2015**  
KIM LUKNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: R. Smith, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MARIN  
UNLIMITED CIVIL JURISDICTION

PAUL WOZNIAK,  
  
Plaintiff,  
  
v.  
  
IDEAMAN, INC.; and DOES 1-150, inclusive,  
  
Defendants.

Case No. CV 1501084  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
  
(Health & Safety Code § 25249.6 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff PAUL WOZNIAK  
3 in the public interest of the citizens of the State of California to enforce the People’s right to be  
4 informed about exposures to lead, a toxic chemical that is found in the exterior designs of shot  
5 glasses sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens about the risks of exposures to lead present in and on the exterior  
8 designs of shot glasses manufactured, distributed, and offered for sale or use to consumers  
9 throughout the State of California.

10 3. Detectable levels of lead are commonly found in and on the exterior designs of  
11 shot glasses that defendants import, manufacture, distribute, ship, sell and offer for sale to  
12 consumers throughout the State of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
14 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
15 doing business shall knowingly and intentionally expose any individual to a chemical known to  
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
17 warning to such individual . . . .” Health & Safety Code § 25249.6.

18 5. On February 27, 1987, pursuant to Proposition 65, California identified and listed  
19 lead as a chemical known to cause birth defects or other reproductive harm. Lead became  
20 subject to the “clear and reasonable warning” requirements of the act one year later on February  
21 27, 1988. (Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
22 25249.10(b).) Lead is referred to hereinafter as the (“LISTED CHEMICAL”).

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without  
24 warning in California, shot glasses with exterior designs containing the LISTED CHEMICAL,  
25 including, but not limited to, the *American Expedition Set of Two Shot Glasses, UPC No. 6*  
26 *59356 00643 5*. All such shot glasses with exterior designs containing the LISTED  
27 CHEMICAL are referred to collectively hereinafter as the (“PRODUCTS”).  
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1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
4 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
5 and 25249.11.

6 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
7 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
8 in the State of California.

9 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
10 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
11 and 25249.11.

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
13 State of California.

14 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
15 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
16 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
17 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
18 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

19 20. IDEAMAN, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
20 DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as  
21 “DEFENDANTS.”

22 **VENUE AND JURISDICTION**

23 21. Venue is proper in the County of Marin, pursuant to Code of Civil Procedure  
24 sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because  
25 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
26 wrongful conduct occurred, and continue to occur, in this county, and/or because  
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1 DEFENDANTS conducted, and continue to conduct, business in Marin with respect to the  
2 PRODUCTS.

3 22. The California Superior Court has jurisdiction over this action pursuant to  
4 California Constitution Article VI, section 10, which grants the Superior Court “original  
5 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
6 which this action is brought does not specify any other basis of subject matter jurisdiction.

7 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
9 association that is a citizen of the State of California, has sufficient minimum contacts in the  
10 State of California, and/or otherwise purposefully avails itself of the California market.  
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
12 California courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65 - Against All Defendants)**

15 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
16 Paragraphs 1 through 23, inclusive.

17 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
18 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
19 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
20 harm.”

21 26. Proposition 65 states, “[n]o person in the course of doing business shall  
22 knowingly and intentionally expose any individual to a chemical known to the state to cause  
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
24 individual . . . .” Health & Safety Code § 25249.6.

25 27. On December 22, 2014, plaintiff’s sixty-day notice of violation, together with the  
26 requisite certificate of merit, was provided to IDEAMAN, and the requisite public enforcement  
27 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the  
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1 LISTED CHEMICAL, workers, consumers and other individuals in the State of California are  
2 being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of  
3 the PRODUCTS, without the individual purchasers and users first having received a “clear and  
4 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

5 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
6 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
7 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
8 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
9 continuous in nature, and, unless enjoined, will continue to occur in the future.

10 29. After receiving plaintiff’s sixty-day notice of violation, the appropriate public  
11 enforcement agencies have failed to commence and diligently prosecute a cause of action  
12 against DEFENDANTS under Proposition 65.

13 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
14 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
15 reasonably foreseeable uses of these products result in exposures that require a “clear and  
16 reasonable” warning under Proposition 65.

17 31. DEFENDANTS knew or should have known that the PRODUCTS they  
18 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
19 CHEMICAL.

20 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
21 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

22 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
23 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
24 defined by title 27 of the California Code of Regulations, section 25602(b).

25 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable use  
26 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact  
27 and/or ingestion.

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1           35.    DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the  
2 reasonably foreseeable use of the PRODUCTS to occur by their deliberate, non-accidental  
3 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or  
4 use to individuals in the State of California.

5           36.    DEFENDANTS failed to provide a “clear and reasonable warning” to those  
6 workers, consumers and other individuals in California who have been, or will be, exposed to  
7 the LISTED CHEMICAL.

8           37.    Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
9 directly by California voters, consumers, and other individuals exposed to the LISTED  
10 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable  
11 use of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,” have  
12 suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or  
13 adequate remedy at law.

14           38.    Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
15 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
16 for each violation.

17           39.    As a consequence of the above-described acts, Health and Safety Code  
18 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
19 DEFENDANTS.

20   **PRAYER FOR RELIEF**

21           Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

22           1.    That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
23 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for  
24 each violation;

25           2.    That the Court, pursuant to Health and Safety Code section 25249.7(a),  
26 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
27 offering the PRODUCTS for sale or use in California without first providing a “clear and  
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1 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601  
2 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

3 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

4 4. That the Court grant such other and further relief as may be just and proper.

5 Dated: March 20, 2015

6 Respectfully Submitted,

7 THE CHANLER GROUP

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9 By: 

10 Josh Voorhees  
11 Attorneys for Plaintiff  
12 PAUL WOZNIAK  
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